

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1021 and 1022

RIN 1506-AA97

Amendment to the Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (“FinCEN”), a bureau of the Department of the Treasury (“Treasury”), is revising the regulations implementing the Bank Secrecy Act (“BSA”) regarding money services businesses (“MSBs”) to clarify which entities are covered by the definitions.

The changes more clearly delineate the scope of entities regulated as MSBs, so that determining which entities are obligated to comply is more straightforward and predictable. This rulemaking amends the current MSB regulations by: (1) ensuring that certain foreign-located persons engaging in MSB activities within the United States are subject to the BSA rules; (2) updating the MSB definitions to reflect past guidance and rulings, current business operations, evolving technologies, and merging lines of business; and (3) separating the provisions dealing with stored value from those dealing with issuers, sellers, and redeemers of traveler’s checks and money orders.

DATES: Effective Date: This rule is effective [INSERT DATE 60 days after publication in the Federal Register]

Compliance Date: The compliance date for 31 CFR 1022.380 is [INSERT DATE 6 MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 1.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The BSA, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, authorizes the Secretary of the Treasury (the “Secretary”) to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence matters, including analysis, to protect against international terrorism.”¹ In addition, the Secretary is authorized to impose anti-money laundering (“AML”) program requirements on financial institutions.² The Secretary’s authority to administer the BSA has been delegated to the Director of FinCEN.³ FinCEN has implemented the BSA through regulations (“BSA regulations,” “implementing regulations” or “BSA rules”) that appear at 31 CFR Chapter X.⁴

¹ 31 U.S.C. 5311.

² 31 U.S.C. 5318(h).

³ See Treasury Order 180-01 (Sept. 26, 2002).

⁴ On October 26, 2010, FinCEN issued a final rule creating a new Chapter X in title 31 of the Code of Federal Regulations for the BSA regulations. See 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule) (referred to herein as the “Chapter X Final Rule”). The Chapter X Final Rule became effective on March 1, 2011. Because the Notice of Proposed Rulemaking, Definitions and Other Regulations Relating to Money Services Businesses, 74 FR 22129 (May 12, 2009), was issued before the Chapter X Final Rule became effective, it was proposed in the 31 CFR Part 103 format. In this Final Rule, for ease of reference and where appropriate, we have included the former 31 CFR Part 103 citation after the 31 CFR Chapter X regulatory citation.

The BSA defines the term “financial institution” to include, in part: a currency exchange; an issuer, redeemer, or cashier of travelers’ checks, checks, money orders, or similar instruments; the United States Postal Service; a person who engages as a business in the transmission of funds; and any business or agency which engages in any activity determined by regulation to be an activity similar to, related to, or a substitute for these activities.⁵

FinCEN has issued regulations under the BSA implementing the recordkeeping, reporting, and other requirements of the BSA with respect to these types of financial institutions. These regulations refer to these types of financial institutions as “money services businesses” (“MSBs”).⁶ Like other financial institutions under the BSA, MSBs must implement AML programs, make certain reports to FinCEN, and maintain certain records to facilitate financial transparency. MSBs are generally required to: (1) establish written AML programs that are reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities;⁷ (2) file Currency Transaction Reports (“CTRs”)⁸ and Suspicious Activity Reports (“SARs”);⁹ and (3) maintain certain records, including those relating to the purchase of certain monetary instruments with currency,¹⁰ transactions by currency dealers or exchangers (to be called

⁵ 31 U.S.C. 5312(a)(2)(J), (K), (R), (V), and (Y).

⁶ See 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

⁷ See 31 CFR 1022.210 (formerly 31 CFR 103.125).

⁸ See 31 CFR 1010.311 (formerly 31 CFR 103.22).

⁹ See 31 CFR 1022.320 (formerly 31 CFR 103.20). Check cashers and transactions solely involving the issuance, sale, or redemption of stored value are not covered by the SAR requirement. See 31 CFR 1022.320(a)(1), (5) (formerly 31 CFR 103.20(a)(1), (5)). FinCEN recently proposed imposing a SAR requirement with respect to transactions involving stored value. See Notice of Proposed Rulemaking, Amendment to the Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Prepaid Access, 75 FR 36589 (June 28, 2010).

¹⁰ See 31 CFR 1010.415 (formerly 31 CFR 103.29).

“dealers in foreign exchange” under this rulemaking),¹¹ and certain transmittals of funds.¹² Most types of MSBs are required to register with FinCEN¹³ and all are subject to examination for BSA compliance by the Internal Revenue Service (“IRS”).¹⁴

B. Past Public MSB Meetings

In 1997, FinCEN held public meetings to give members of the financial services industry an opportunity to discuss the proposed MSB regulations and any impact they might have on operations.¹⁵ In drafting the final rules defining the MSB categories,¹⁶ FinCEN relied in part on the comments made in these public forums.

On March 8, 2005, FinCEN held a fact-finding meeting in Washington, D.C. on the provision of banking services to MSBs.¹⁷ MSBs recounted their challenges in obtaining and maintaining banking services due to the perception that their businesses posed a high risk of money laundering and terrorist financing. In 2006, FinCEN issued an advance notice of proposed rulemaking seeking input on how to address these

¹¹ See 31 CFR 1022.410 (formerly 31 CFR 103.37).

¹² See 31 CFR 1010.410(e)-(f) (formerly 31 CFR 103.33(f)-(g)).

¹³ See 31 CFR 1022.380 (formerly 31 CFR 103.41).

¹⁴ 31 CFR 1010.810(b) (formerly 31 CFR 103.56(b)(8)).

¹⁵ These public meetings were held in Vienna, Virginia, on July 22, 1997; New York, New York, on July 28, 1997; San Jose, California, on August 1, 1997; Chicago, Illinois, on August 15, 1997; and Vienna, Virginia, on September 3, 1997. The discussions focused on how businesses operate and how best to regulate them.

¹⁶ Definitions Relating to, and Registration of, Money Services Businesses, 64 FR 45438 (Aug. 20, 1999) (“1999 Rulemaking”).

¹⁷ FinCEN conducted the meeting in conjunction with the Non-bank Financial Institutions and Examination Subcommittees of the Bank Secrecy Act Advisory Group (“BSAAG”). BSAAG is an advisory group created by the Annunzio-Wylie Anti-Money Laundering Act, consisting of industry, regulatory, and law enforcement participants for the purpose of engaging in open dialogue related to the protection of the U.S. financial system from money laundering, terrorist financing, and other abuses. BSAAG uses a variety of permanent and ad hoc subcommittees to identify and analyze relevant issues. Pub. L. 102-550, Title XV, sec. 1564 (Oct. 28, 1992), 106 Stat. 4073.

challenges,¹⁸ and received 142 comments in response, which have informed this rulemaking.¹⁹

C. Need for Review and Updates

More than ten years have passed since FinCEN issued the BSA regulations defining the categories of MSBs.²⁰ Since that time, FinCEN has received numerous requests to apply the MSB regulations to fact patterns specific to particular businesses. Over one-third of these requests came from persons inquiring whether or not they were an MSB.²¹ Some of these requests for guidance were prompted by significant technological advances such as stored value products and the online provision of financial services. These and other developments have changed the nature of the MSB industry. Where possible, FinCEN has provided guidance to the industry on how to interpret and apply the regulations.

With respect to check cashers and money transmitters in particular, FinCEN has developed a large body of guidance in the years since the issuance of the final MSB regulations in 1999.²² Similarly, over the years, FinCEN has issued guidance and administrative rulings that provide examples of activities that do not meet the regulatory definition of a money transmitter, even though entities engaged in such activities may be

¹⁸ Provision of Banking Services to Money Services Businesses, 71 FR 12308 (March 10, 2006).

¹⁹ These comments are available in files dated March 10 and May 15, 2006 at http://www.fincen.gov/statutes_regs/bsa/regs_proposal_comment.html.

²⁰ See 1999 Rulemaking, 64 FR 45438 (Aug. 20, 1999). For a discussion of this history, see also the Notice of Proposed Rulemaking FinCEN; Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Money Services Businesses, 74 FR 22129, 22131 (May 12, 2009).

²¹ This statistic comes from a review of requests for guidance from FinCEN's Regulatory Helpline.

²² See FinCEN Ruling 2002-2 (Definition of Check Cashier (Payday Lenders)) (Feb. 5, 2002) and FinCEN Guidance 2006-G005 (Frequently Asked Questions – Businesses Cashing Their Own Checks) (March 31, 2006). For a discussion of this guidance, see Notice, 74 FR at 22131.

involved in accepting and transmitting funds.²³ Given the nature and scope of these important interpretative rulings, FinCEN has updated, streamlined, and clarified the MSB regulations in this rulemaking by incorporating and extending these interpretations in the regulatory revisions.

II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the Notice of Proposed Rulemaking “Definitions and Other Regulations Relating to Money Services Businesses” published in the Federal Register on May 12, 2009 (the “Notice”).²⁴ With the intent of more clearly delineating the scope of entities regulated as MSBs, the Notice proposed a number of changes to the MSB definitions, in particular: (1) emphasizing that the MSB definition is based on a person’s activities; (2) ensuring that certain foreign-located persons engaged in MSB activities within the United States, such as having customers located in the United States, are subject to the BSA rules; (3) separating the provisions dealing with stored value from those dealing with issuers, sellers, and redeemers of traveler’s checks and money orders; (4) deferring the proposal of a new definition of stored value to a separate rulemaking; and (5) combining the definitions in 31 CFR 1010.100(ff)(3) (formerly 31 CFR 103.11(uu)(3)) and 31 CFR 1010.100(ff)(4) (formerly 31 CFR 103.11(uu)(4)) into one paragraph dealing with both issuers and sellers of traveler’s checks and money orders excluding stored value. The Notice also specifically requested comment on a number of aspects of the proposed changes, particularly with

²³ See FinCEN Rulings: 2003-8 (Definition of Money Transmitter (Merchant Payment Processor)) (Nov. 19, 2003); 2004-4 (Definition of Money Services Businesses (Debt Management Company)) (Nov. 24, 2004); 2008-R005 (Whether Certain Reloadable Card Operations are Money Services Businesses) (March 10, 2008) (Merchants and ATMs associated with a network of banks were not deemed money transmitters); and 2008-R006 (Whether an Authorized Agent for the Receipt of Utility Payments is a Money Transmitter) (May 21, 2008). For a discussion of these rulings, see Notice, 74 FR at 22131-2.

²⁴ See 74 FR 22129 (May 12, 2009).

respect to a definition of the term “funds,” aggregating multiple MSB services for threshold purposes, foreign-located MSBs, thresholds, and stored value. The Notice also proposed a number of minor edits to make the regulations more readable.

III. Comments on the Notice—Overview and General Issues

The comment period for the Notice ended on September 9, 2009. FinCEN received a total of 25 comment letters.²⁵ Of these, two were submitted by depository institutions, eight by industry associations, seven by various industry participants, two by government agencies, and six by individuals. Generally, commenters were supportive of the proposals to clarify the MSB definitions. FinCEN requested comment on a number of issues for informational purposes that are not addressed by this final rule, such as stored value-related issues, whether check cashers should have SAR filing requirements and whether additional recordkeeping requirements for MSBs should be implemented. Although these requests for comment were not tied to any specific regulatory changes FinCEN was proposing in the Notice, the information provided by commenters can be useful to FinCEN in formulating policy decisions in the future. FinCEN values and appreciates the comments received on these questions.

Stored Value-Related Issues²⁶

Approximately half of the comments received in response to the Notice addressed stored value-related issues that responded to questions and requests for comment posed in

²⁵ All comments to the Notice are available for public viewing at www.regulations.gov.

²⁶ In June 2010 FinCEN proposed replacing the term “stored value” with “prepaid access” without intending to broaden or narrow the scope of the term, but instead to use terminology commonly used by the industry. See Notice of Proposed Rule Making, Amendment to the Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Prepaid Access, 75 FR 36589 (June 28, 2010). At the time the Notice was issued, FinCEN had not yet proposed changing the terminology. This final rule uses the term “stored value.” Any changes in defined terms will be addressed in a subsequent rulemaking regarding prepaid access.

the Notice. The questions were intended to elicit responses that would assist FinCEN's effort to regulate stored value.

On May 22, 2009, shortly after the Notice was published, the Credit Card Accountability, Responsibility and Disclosure Act of 2009 ("Credit CARD Act")²⁷ was signed into law. Section 503 of the Credit CARD Act requires the Secretary to "issue regulations in final form implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards." The congressional mandate of Section 503 of the Credit CARD Act is broader in scope than the stored value-related questions posed in the Notice.

In furtherance of that mandate, FinCEN has separately published a notice of proposed rulemaking specific to stored value, which FinCEN has proposed to rename "prepaid access" (the "Prepaid Access NPRM").²⁸ FinCEN believes that to address stored value-related issues in this MSB rule could cause confusion among the public. Accordingly, FinCEN has decided to comprehensively address stored value-related issues in the pending Prepaid Access rulemaking, generally including those stored value-related issues raised in the Notice. The comments received in response to the Notice provided valuable insights and were considered in drafting the Prepaid Access NPRM.

Definition of "Money Transmitter"

In the Notice, FinCEN proposed to revise several portions of the current definition of "money transmitter" to clarify which activities are covered by or excluded from the definition. Most commenters generally supported the proposed changes. All

²⁷ The Credit CARD Act, Pub. L. 111-24, codified at 5 U.S.C. 57, Chapter 57; 11 U.S.C. 111; 15 U.S.C. 1601, 1602, 1632, 1637, 1640, 1650, 1661, 1666, 1666b, 1666c, 1681b, 1681j, 1693, 41 and 632; 20 U.S.C. 1001 and 1002; 31 U.S.C. 5316 (May 22, 2009).

²⁸ See 75 FR 36589 (June 28, 2010).

commenters supported excluding from the definition of “money transmitter” persons that have only a “custodial interest” in currency they are transporting.²⁹ One commenter construed the definition of “money transmitter” to exclude the agents of a principal money transmitter. FinCEN wishes to clarify that any person that satisfies the definition of a “money services business,” including an agent, is an MSB. Whether it is the agent of another MSB is relevant only for registration purposes. Two commenters suggested additional exclusions to the definition of “money transmitter” for intermediaries and certain bill payment services. The suggestions regarding intermediaries and certain bill payment services are discussed further in the Section-by-Section Analysis.

Definition of “Currency Dealer or Exchanger”

In the Notice, FinCEN proposed to make several changes to the definition of “currency dealer or exchanger” (to be called “dealers in foreign exchange” under this rulemaking) to more accurately reflect the actual underlying activity of the industry. Eight commenters addressed various issues related to this definition. Most commenters supported the proposed changes. As a result, the proposal was adopted without change. These comments are further discussed in the Section-by-Section Analysis below.

FinCEN received a comment letter from the Commodity Futures Trading Commission (“CFTC”) regarding certain amendments recently made to the Commodity Exchange Act (“CEA”), which, among other things, adds a new registration category for dealers in off-exchange retail foreign exchange known as “retail foreign exchange dealers” (“RFEDs”).³⁰ MSBs, including dealers in foreign exchange, do not include

²⁹ The “custodial” exclusion relates to a person engaged in physical transportation, such as an armored car. For a more comprehensive discussion, see Section IV.F. of this rule. See also Notice at 74 FR 22138.

³⁰ See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Sec. 13101, 122 Stat. 1651, 2189-94 (2008) (amending section 2(c)(2) of the CEA, 7 U.S.C. 2(c)(2)).

persons registered with, and regulated or examined by, the CFTC. FinCEN is considering the CFTC's comments and has decided that it would not be appropriate to address the issue of RFEDs in this rulemaking.

IV. Section-by-Section Analysis

A. Refining the General Definition of “Money Services Business” Doing Business

Prior to this rulemaking, the regulatory definition of MSB covered “[e]ach agent, agency, branch or office within the United States of any person *doing business*, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section.”³¹ In the Notice, FinCEN proposed to amend 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)) by removing the phrase “doing business,” and replacing it with the phrase “engaged in activities.” FinCEN proposed this amendment because the phrase “doing business” has been misunderstood as an implied reference to the status that an entity has taken on itself or been assigned, such as a business licensed by a state. Based on such a misunderstanding, some have wrongly concluded that an unlicensed business is not subject to regulation as an MSB, even if it is engaged in one or more of the activities listed in 31 CFR 1010.100(ff)(1)–(5). Most of the comments received regarding the proposed change were supportive. However, although FinCEN emphasized in the Notice that the proposed change would not expand the definition of MSB beyond its present scope, two commenters expressed concerns about this proposed change.

One commenter argued that removing the phrase “doing business” from the regulations would cause the definition of MSB to include persons who were not in fact

³¹ 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)) (emphasis added).

doing business as MSBs, and asserted that expanding the category to this extent would be beyond FinCEN's powers under the BSA, which specifically refers to several types of financial institutions as "businesses" in several places.³²

FinCEN will not remove the phrase "doing business" from the definition of MSB in this final rule. Instead, the definition will be rephrased to state that an MSB is "[a] person wherever located doing business, *whether or not on a regular basis or as an organized or licensed business concern*, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section." We moved the qualifying phrase "whether or not on a regular basis or as an organized business concern" from the end of the sentence to immediately follow "doing business" in an effort to emphasize our concern that "doing business" can be misinterpreted to refer to status, not activity. To that end, the words "or licensed" have been added before "business concern" to further clarify the issue.

FinCEN wishes to emphasize that whether a person is subject to regulation as an MSB does not depend on factors such as whether the person is licensed as a business by any state; whether the person has employees; or whether the person is engaged in a for-profit venture. Although the final rule continues to use the phrase "doing business," it is a person's activities, rather than formal business status, that would cause the person to be categorized as an MSB.

Another commenter suggested that the change proposed by the Notice might expand the definition of MSB to include, for example, an individual who cashed a check as an accommodation for a family member. Despite not moving forward with the change proposed in the Notice, FinCEN remains concerned that the definition might be

³² 31 U.S.C. 5312(a)(2)(R), (T), (W), (Y), (Z); 31 U.S.C 5330(d).

misunderstood to include such an individual. In response to this concern, the final rule includes a provision that excludes “a natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit” from the MSB definition. By using the phrase “a natural person” in the limitation, FinCEN excludes only individuals; not business entities, non-profits, or other legal persons from the MSB definition. By “infrequent” activities, FinCEN intends to limit the exclusion to activity that is rare.³³ By “gain or profit,” FinCEN intends this exclusion not to be available to persons engaging in these activities for the purpose of monetary gain or other economic benefit, such as an exchange of valuable favors. This exclusion forestalls any interpretation of the definition of MSB to include persons solely providing accommodation services to family members, as in the commenter’s hypothetical. Nevertheless, whether a person engages in MSB activities depends on all of the facts and circumstances of each case.

Activity Threshold

Currently, the MSB regulations apply to persons engaged in specified activities that exceed \$1,000 for any person in any day (“activity threshold”). The activity threshold applies to all MSB categories³⁴ except money transmitters, which do not have an activity threshold. FinCEN proposed no changes to the activity thresholds in this rulemaking. However, FinCEN sought comments from the public regarding whether possible adjustments to the activity threshold should be made in a future rulemaking.

³³ This limitation should be interpreted to mean activities that are not frequent as that term is used in FinCEN’s Guidance On Interpreting “Frequently” Found In The Criteria For Exempting A “Non-Listed Business” Under 31 C.F.R. §103.22(d)(2)(vi)(B), (November 2002), http://www.fincen.gov/statutes_regs/guidance/html/final_definition_of_frequent.html.

³⁴ FinCEN has proposed a modified application of the \$1,000 activity threshold with respect to prepaid access, such that providers of prepaid access clearly marked with a value not exceeding \$1,000 would not be subject to regulation as an MSB. See Definitions and Other Regulations Relating to Prepaid Access, 75 FR 36589 (June 28, 2010).

More than one-third of all comment letters received in response to the Notice expressed an opinion regarding the current activity thresholds. Several commenters supported the proposition that the threshold should be reviewed, but expressed no opinion as to whether it should be increased, decreased, eliminated, or maintained at current levels. One commenter supported the elimination of all thresholds to create uniformity among different types of MSBs, and argued that the thresholds are ineffective insofar as one can operate under those levels without decreasing the risk of money laundering. Another commenter supported raising the thresholds, and argued that the current levels place an undue burden on small businesses. Several commenters supported adjusting the thresholds to take into account disparate thresholds imposed by various state authorities, inflation, or the transaction volume of each individual MSB. Finally, several commenters supported maintaining the current thresholds.

FinCEN also sought specific comments from the public regarding whether transactions involving multiple MSB services should be aggregated together for purposes of determining whether the activity threshold has been met. The comments received on this proposal stressed the logistical complications of compliance with an aggregation requirement on the part of retailers that sell multiple MSB products and act as agents for multiple MSBs. All comments received regarding this proposal were opposed to it.

FinCEN will continue to study these issues and consider the need for a separate rulemaking to adjust the MSB activity thresholds.

Foreign-Located MSBs

FinCEN proposed to amend 31 CFR 1010.100(ff) to provide that foreign-located persons engaging in MSB activities in the United States are subject to the BSA rules.

Specifically, FinCEN proposed to revise 31 CFR 1010.100(ff) so that an entity qualifies as an MSB based on its activity within the United States, not the physical presence of one or more of its agents, agencies, branches, or offices in the United States. This proposal arose out of the recognition that the Internet and other technological advances make it increasingly possible for persons to offer MSB services in the United States from foreign locations. FinCEN seeks to ensure that the BSA rules apply to all persons engaging in covered activities within the United States, regardless of each person's physical location. To permit foreign-located persons to engage in MSB activities within the United States and not subject such persons to the BSA would be unfair to MSBs physically located in the United States and would also undermine FinCEN's efforts to protect the U.S. financial system from abuse.

Of the seven comments received on the issue of extending the BSA regulations to cover foreign-located MSBs conducting activities in the United States, five commenters supported it, including two government and three industry commenters. The two commenters opposed were from industry.

Two commenters argued that a foreign-located person's mere maintenance of a bank account in the United States should not cause that person to be defined as an MSB. FinCEN agrees with that position.³⁵ Under the final rule, a foreign-located person will be subject to the BSA as an MSB to the extent that it does business in one or more of the capacities listed in 1010.100(ff)(1) through 1010.100(ff)(5) wholly or in substantial part

³⁵ See FinCEN Ruling 2004-1 (Definition of Money Services Business) (Foreign-Located Currency Exchanger With U.S. Bank Account) (A foreign-located currency exchanger whose only presence in the United States was a bank account was not deemed an MSB when the currency exchange transactions occurred solely in a foreign country for foreign-located customers and the use of the U.S. bank account was limited to issuing and clearing dollar-denominated monetary instruments.) (March 29, 2004).

within the United States.³⁶ Whether or not a foreign-located person's MSB activities occur within the United States depends on all of the facts and circumstances of each case, including whether persons in the United States are obtaining MSB services from the foreign-located person, such as sending money to or receiving money from third parties through the foreign-located person.

A commenter also noted that foreign banks, broker dealers, and possibly other financial institutions might be subject to the MSB regulations. FinCEN does not intend to include these institutions in the MSB definition. FinCEN, therefore, has expanded the limitations to the MSB definition to cover foreign banks, as well as other foreign financial agencies that engage in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the Securities and Exchange Commission ("SEC") or CFTC. These provisions parallel the existing limitations covering domestic banks and entities registered with the SEC or CFTC.

Two commenters expressed general concerns regarding the practicality of regulating foreign-located MSBs. Both commenters also argued that the proposed change could create a misperception that foreign-located MSBs are too risky for financial institutions to provide them with financial services. Consequently, foreign-located MSBs would find it increasingly difficult to open accounts with banks unwilling to assume such potential risks. Although FinCEN acknowledges that regulating foreign-located MSBs may present challenges, FinCEN believes that there are meaningful benefits to be derived from such regulation.

³⁶ For an expanded discussion the nature of activities that will subject a foreign-located person to the BSA as an MSB, please refer to the Notice, 74 FR at 22133.

Under the final rule, foreign-located MSBs will have the same reporting and recordkeeping and other requirements as MSBs with a physical presence in the United States, with respect to their activities in the United States. Foreign-located MSBs will be subject to the same civil and criminal penalties as MSBs with a physical presence in the United States, with respect to their failure to comply with regulatory requirements.³⁷ Foreign-located MSBs will also be required to designate a person who resides in the United States to function as an agent to accept service of legal process, including with respect to BSA compliance.

Limitations

For clarity, FinCEN proposed to add 31 CFR 1010.100(ff)(8) to create a new section providing limitations to the definition of MSB. FinCEN proposed to move the first two limitations, excluding (1) banks and (2) persons registered or required to register with, and functionally regulated or examined by, the SEC or the CFTC, from the definition of MSB at 31 CFR 1010.100(ff) for clarity. Also, as noted above, foreign banks and certain foreign financial agencies have been included in the limitations in the final rule to address issues raised by commenters with regard to foreign-located MSBs. The third limitation, as discussed above, clarifies the scope of the definition of MSB, excluding individuals engaging in infrequent activity as an accommodation. There were no comments on moving the first two limitations to a separate section. The addition of the third limitation regarding natural persons and the extension of the first two limitations to include foreign institutions, while not proposed, do not alter any obligations but merely clarify the scope of 31 CFR 1010.100(ff).

³⁷ See 31 CFR 1022.380(e) (formerly 31 CFR 103.41(e)), 31 CFR 1010.810-1010.820 (formerly 31 CFR 103.56-103.57), and 31 CFR 1010.840 (formerly 31 CFR 103.59).

B. Changes to the Definition of “Currency Dealer or Exchanger”

FinCEN proposed several changes to 31 CFR 1010.100(ff)(1) (formerly 31 CFR 103.11(uu)(1)), which defines “currency dealer or exchanger” as a category of MSB. Comments regarding proposed changes, while noting a few concerns (discussed below), were largely supportive, and the final rule adopts all of the proposed changes.

The final rule replaces the phrase “currency dealer or exchanger” with “dealer in foreign exchange.” Removal of the term “currency” from the category’s name is designed to clarify that persons meet the definition by not only exchanging currency, but also by exchanging other monetary instruments, funds, or other instruments denominated in currency. Although the BSA uses the term “currency exchange,” FinCEN interprets this language as having been intended to capture the underlying activity involved in foreign exchange services, which includes the exchange of instruments other than currency. The proposed change is consistent with current industry practice, which commonly involves exchanging instruments other than currency.

The final rule inserts the term “foreign” into the category’s name to clarify FinCEN’s longstanding policy that any exchange that occurs in the United States is covered by the definition, even if the exchange consists of currency, other monetary instruments, funds, or other instruments denominated exclusively in non-U.S. currencies. Therefore, if all other requirements are fulfilled, and a person exchanges currency, other monetary instruments, funds, or other instruments denominated in one non-U.S. currency for those in another non-U.S. currency, the person is a dealer in foreign exchange for BSA purposes. Though such transactions may not involve U.S. dollars, the potential use of a dealer in foreign exchange in this manner to launder money, finance terrorism, or

carry out other illicit activity nevertheless would impact the U.S. financial system and should be subject to regulation. Failure to capture exchanges within the United States of two foreign currencies (or of payment instruments denominated in two foreign currencies) would leave a significant and unnecessary gap in the BSA rules. This change also underscores the international nature of money laundering and terrorist financing.

By inserting the phrase “currency, or other monetary instruments, funds or other instruments” the final rule clarifies that dealing in foreign exchange is not limited to the physical exchange of the *currency* of one country for the *currency* of another country. This language sets forth the media of exchange that trigger the definition more clearly than in the previous version of the rule. FinCEN’s current rules and existing body of administrative rulings establish that a person who converts funds denominated in the currency of one country into funds denominated in the currency of another country is an MSB by virtue of that activity.³⁸ Additionally, the phrase “other instruments” is intended to capture those types of payment instruments that do not fall precisely into one of the other categories, but nevertheless are readily recognizable as payment instruments.

One commenter expressed concern that the inclusion of “other instruments denominated in currency” in addition to “currency” would cover persons offering foreign exchange transactions that involve stored value or other products in a manner that would implicate a wide range of retailers and other entities not generally understood to be dealers in foreign exchange. FinCEN does not consider this to be the case however, because payment devices such as debit cards, credit cards, and stored value do not

³⁸ See FinCEN Ruling 2008-R003 (Whether a Person That is Engaged in the Business of Foreign Exchange Risk Management is a Currency Dealer or Exchanger or Money Transmitter) (May 9, 2008); FinCEN Ruling 2008-R002 (Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter) (May 9, 2008); and 31 CFR 1022.410(b)(6) (formerly 31 CFR 103.37(b)(6)).

involve currency exchanges at a point of sale. The point of sale transaction, from the perspective of the buyer and the seller (including the U.S.-located merchant hypothesized by the commenter), is only denominated in U.S. dollars. Any exchange of currency involved in such a transaction occurs in the back office processing of the financial institution issuing the device. A merchant's acceptance of foreign issued stored value to purchase U.S. issued stored value or U.S. currency, other monetary instruments, funds, or other instruments does not make that merchant a dealer in foreign exchange. On the other hand, there are transactions involving stored value that FinCEN would deem foreign exchange, including scenarios where a merchant either accepts or pays out foreign currency in exchange for stored value. For example, a person is a dealer in foreign exchange if the person: 1) accepts foreign currency, or other monetary instruments, funds, or other instruments (other than stored value) denominated in foreign currency, and provides a stored value product in return; or 2) accepts stored value and provides in return foreign currency, or other monetary instruments, funds, or other instruments (other than stored value) denominated in foreign currency.

The final rule includes the phrase “of one or more other countries”³⁹ in the definition, underscoring FinCEN's policy that a person is not a dealer in foreign exchange based on exchanges that involve currency or instruments denominated exclusively in the currency of one country. Assuming all other conditions under the BSA rules are met, a dealer in foreign exchange is a person that converts the currency, other monetary instruments, funds, or other instruments denominated in one currency for the

³⁹ The addition of “one or more other countries” is intended to capture the fact that some foreign currencies are used by multiple countries. For instance, the Euro is used by member states of the European Union. Accordingly, a dealer in foreign exchange may accept funds of one or more other *countries* in exchange for funds of one or more other countries.

currency, other monetary instruments, funds, or other instruments denominated in a different currency.

FinCEN received one comment in support of this proposal, and two comments in opposition. One commenter argued that when a person accepts instruments denominated in the currency of one country in exchange for currency of the same country, where the currency is not U.S. dollars, the exchange may technically require an intermediate transaction involving U.S. dollars. FinCEN, however, is concerned with the customer transaction and what currency the customer begins with and ends with, not any exchanges or recording that take place in the back office of the merchant. The other commenter opposing the proposal argued that the activity of exchanging bills within the same currency should be covered under the MSB rules because certain criminals convert denominations of cash exclusively within the currency of one country. Both of these comments, however, in essence propose to include activities within the category that are not commonly understood to be “foreign exchange.” Therefore, FinCEN believes the proposed change better comports with the common understanding of the foreign exchange business.

The final rule includes the phrase “for any other person” to explicitly reflect FinCEN’s longstanding position that a person is not a dealer in foreign exchange to the extent the person exchanges their own money on their own behalf.⁴⁰

The final rule includes the phrase “whether or not for same-day delivery” to account for the potential time difference between the date on which the exchange rate is agreed and the date of the exchange. Common settlement terms in foreign exchange

⁴⁰ See, e.g., FinCEN Ruling 2003-9, (Definition of Money Services Business (Money Transmitter/Currency Dealer or Exchanger)) (October 20, 2003). See also, FinCEN Ruling 2004-3, (Definition of Money Services Business (Money Transmitter/Currency Dealer or Exchanger)) (Aug, 17, 2004).

markets include: (1) same-day or cash – where the parties both agree to an exchange of currency and conclude the exchange on the same working day; (2) spot – where the parties agree to an exchange of currency on one date, with the exchange taking place two working days thereafter; (3) cash forward – where the parties agree to an exchange of currency on one date, with the exchange of currency deferred until an agreed-upon date in the future; and (4) future – where the parties agree to an exchange of currency on one date, with settlement to occur in an agreed upon delivery period in the future, typically by payment of an amount reflecting the change in the foreign currency rate between the time of the agreement and delivery. A contract for future delivery of currency may also be settled with the delivery of currency, resulting in the exchange of the currencies underlying the futures contract.

One commenter expressed concern that this change will create confusion regarding the \$1,000 threshold where the dealer in foreign exchange is instructed to make multiple disbursements of exchanged currency over time. The use of the phrase “whether or not for same day delivery” is intended to capture such activity and to make clear that the date of the payment by the customer to the dealer in foreign exchange, not the date of any subsequent disbursements, is the date relevant to the calculation of the \$1,000 threshold.

Persons registered with and functionally regulated or examined by the CFTC including retail foreign exchange dealers are excluded from the definition of dealer in foreign exchange. As noted above, FinCEN is consulting with the CFTC regarding retail foreign exchange dealers.⁴¹

⁴¹ 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

C. Meaning of the Term “Check Cashier”

FinCEN proposed to amend 31 CFR 1010.100(ff)(2) (formerly 31 CFR 103.11(uu)(2)) to clarify the meaning of the term “check cashing” by splitting the existing regulatory definition into two paragraphs: one paragraph to define check cashing activity; another paragraph to exclude certain activity from that definition.

In the Notice, FinCEN proposed several changes to the definition of “check cashier” to more accurately describe which activities are covered by or excluded from the definition. Nine commenters addressed various issues related to the definition of “check cashier.” Most commenters generally supported the proposed changes. As a result, the final rule adopts most of them without change with one exception, related to stored value, discussed below regarding activities not subject to the “check cashier” definition.

“In return” was added to the definition to more accurately describe the activity that occurs when cashing a check or redeeming a monetary instrument. The Uniform Commercial Code references were added to provide a clear definition of “check.” A reference to the definition of “monetary instruments” was also provided. “Other instruments” is intended to capture those types of payment instruments that do not fall precisely into one of the other categories. The term “other instruments” is meant to capture those instruments that are readily recognizable as payment instruments without capturing goods or services that may be purchased with a check or monetary instrument.

The definition incorporates the redeeming of monetary instruments into the definition of “check cashier.” Given its similarity to check cashing, it is unnecessary to treat this activity separately from check cashing.⁴² Accordingly, a person engaged in

⁴² FinCEN does not interpret “redeem” to include taking payment instruments or mechanisms in exchange for goods or services. See 1999 Rulemaking, 64 FR at 45441-45443.

redeeming monetary instruments (including traveler's checks and money orders) is a check casher if it redeems checks for currency or a combination of currency and monetary or other instruments. This revision does not capture activity that is tantamount to merely exchanging one monetary instrument for another monetary or other instrument and accordingly requires currency to be included in the redeeming. All of the commenters that addressed this proposal were supportive. As a result, the final rule adopts this proposal without change.

One commenter requested clarification regarding the cashing of checks or other instruments in exchange for both goods and services and currency. Entities that accept payment for goods or services with a check and return more than \$1,000 in currency or a combination of currency and other monetary instruments fall under the definition of "check casher" regardless of the value of the goods or services.⁴³

The revision also clarifies what activities are not subject to the "check casher" definition. The definition, as proposed, exempted purchases of closed loop stored value with a check, monetary instrument, or other instrument. One commenter objected to this limitation, expressing concerns that it was too narrow and that sellers of open loop stored value in exchange for checks would be "check cashers" for purposes of this rule. As a result, this final rule exempts the purchase of any type of stored value with a check, monetary instrument, or other instrument from being an activity subject to the check

⁴³ See Guidance - Definition of Check Casher and BSA Requirements (Jan. 2003), http://www.fincen.gov/statutes_regs/guidance/html/definition_of_check_cashier.html.

cashier definition. Stored value related issues generally will be dealt with in a separate rulemaking, as will be discussed subsequently.⁴⁴

The definition also exempts persons who cash checks for the verified maker of a check otherwise buying goods and services. One commenter was in favor of this proposal and one opposed. The commenter opposed to this proposal was concerned that retailers would not be able to verify the maker of a check. FinCEN does not believe that this will be a problem, however, because retailers can verify the identity of the maker of the check in any manner that comports with their internal policies. Retailers can verify the maker of a check by, for example, checking a driver's license or other form of identification at the time of purchase against the name of the maker of the check, already a common practice of some retailers who accept personal checks. The Notice asked for comment on other types of low risk check cashing that should be exempt, such as government or payroll checks. Several commenters agreed that cashing such low risk checks should be exempt, but two commenters disagreed, noting that fraud exists in such low risk checks as well and that such exemptions unnecessarily complicate due diligence. FinCEN may address other types of low risk check cashing in a future rulemaking after further study.

Finally, under the previous regulations, redeemers of traveler's checks and money orders had SAR obligations while check cashers did not. As these two categories of MSB have been combined, we will seek comment in a future rulemaking on whether or not to require check cashers to report suspicious activity to FinCEN under the BSA. Commenters to this rulemaking were largely in favor of a SAR requirement for check

⁴⁴ See the discussion below under "Meaning of the Term 'Stored Value'" for a discussion of the relationship of this final rule to the recent Notice of Proposed Rulemaking "Definitions and Other Regulations Relating to Prepaid Access," 75 FR 36589 (June 28, 2010).

cashers, though two commenters disagreed, noting the high number of reports that would be generated and the burden on check cashing businesses. Issuers of traveler's checks and money orders will continue to have SAR reporting requirements with respect to the instruments that they issue.

C. Meaning of the Term "Issuer or Seller of Traveler's Checks or Money Orders"

This rule combines prior sections 1010.100(ff)(3) (formerly 103.11(uu)(3)), "issuer of traveler's checks, money orders, or stored value," and 1010.100(ff)(4) (formerly 103.11(uu)(4)), "seller or redeemer of traveler's checks, money orders, or stored value," into new section 1010.100(ff)(3), "issuer or seller of traveler's checks or money orders." Issuance and sale of traveler's checks and money orders are similar activities in that they can be covered by a single definition. A new, separate category relating to stored value, renamed "Issuer, seller, or redeemer of stored value," replaces 1010.100(ff)(4) and is discussed subsequently.⁴⁵

In the Notice, FinCEN proposed to clarify the definitions regarding activities related to traveler's checks and money orders by removing redundant language and specifying how to calculate the activity threshold for such activities. Five commenters addressed various issues related to the definition of "issuer or seller of traveler's checks or money orders."

The rule eliminates the "redeemer" language that is contained in the previous definitions. Although the previous rules included those who "redeem" traveler's checks and money orders, traveler's checks typically are redeemed by their issuers, making a

⁴⁵ See the discussion below under "Meaning of the Term 'Stored Value'" for a discussion of the relationship of this final rule to the recent Notice of Proposed Rulemaking "Definitions and Other Regulations Relating to Prepaid Access," 75 FR 36589 (June 28, 2010).

separate redemption category redundant in such circumstances. Moreover, redeeming a traveler's check or money order by a non-issuer has been incorporated into the definition of a check casher.⁴⁶ All of the commenters who addressed this proposal were supportive. As a result, the final rule adopts this proposal without change.

The rule defines an "issuer" by virtue of the amount at which its monetary instruments or traveler's checks are sold, as opposed to the amounts at which they are issued. For example, the amount of the sale includes the face value of the monetary instruments plus any fees. Because money orders are not issued in round dollar increments like traveler's checks, but are rather sold either directly by the issuer or by its agent to a customer who specifies the exact amount, a business must look at this activity to determine whether its transactions exceed the activity threshold per person per day. Similarly, although traveler's checks are usually issued in large round amounts (e.g., \$20, \$50, or \$100), the definition is linked to the aggregate amount at which those checks are sold, either directly by the issuer or at the agent level, to a customer in a single day. All of the commenters who addressed this proposal were supportive, though one commenter argued that issuers and sellers should only be responsible for aggregation based on the amount for which the instrument is sold to the extent that they have actual knowledge that the transactions involve the same person and exceed the threshold. However, changing the requirement from the face value of the instrument to the amount for which the instrument is sold does not change the aggregation requirement. Businesses have the

⁴⁶ FinCEN has never held that a business that provides goods or services in exchange for payment in the form of money orders or traveler's checks is an MSB. See 1999 Rulemaking, 64 FR at 45447. Accordingly, only a business that redeems these instruments for currency, or exchanges them for a combination of currency and monetary or other instruments, is considered an MSB, specifically a check casher, under the rule.

same aggregation requirements as under the prior rule, only the determination of the amount has changed. The final rule adopts this proposal without change.

D. Meaning of the Term “Stored Value”

Under the prior rules, FinCEN addressed traveler’s checks, money orders, and stored value under two separate definitions of providers of those products: (1) issuers and (2) sellers or redeemers. The Notice proposed to group providers of stored value together, separately from issuers or sellers of traveler’s checks and money orders. All of the commenters who addressed this proposal were supportive. The final rule adopts this proposal without change.

Several commenters noted that stored value is empirically similar to activity engaged in by persons defined as “‘money transmitters,’” but the mechanisms for directing that the money be transmitted are different. Most commenters on this issue recommended treating stored value as a separate category of MSB. FinCEN agrees, and is therefore treating stored value as a distinct MSB activity, keeping it separate from the category established for money transmitters, while at the same time acknowledging that stored value should have more comprehensive anti-money laundering regulation.

In 1999, FinCEN issued a final rulemaking deferring certain requirements for the stored value industry based on the complexity of the industry and the desire to avoid unintended consequences with respect to an industry then in its infancy. In 2009, Congress passed the Credit CARD Act, which required FinCEN to issue regulations relating to stored value. On June 28, 2010, FinCEN issued Notice of Proposed Rule Making, Amendment to the Bank Secrecy Act Regulations – Definitions and Other

Regulations Relating to Prepaid Access.⁴⁷ The proposed changes to stored value are generally not reflected in this rulemaking, but will be addressed in a separate Prepaid Access rule.

E. Meaning of the Term “Money Transmitter”

This rule revises the regulation interpreting 31 U.S.C. 5312(a)(2)(R), which includes money transmitters within the definition of “financial institution” under the BSA. The prior regulation contained a facts and circumstances limitation that excluded from the “money transmitter” definition persons that are engaged in the business of money transmission as an integral part of the execution and settlement of the transaction. The “integral” exception includes entities that could not engage in their businesses without engaging in the transmission of funds. This rule clarifies the language of these limitations.

This rule’s definition of “money transmitter” is “a person who provides money transmission services.” This language is consistent with existing language in the BSA.⁴⁸ The definition removes the phrase “engages as a business” as FinCEN continues to regulate an MSB by its activity and the context in which the activity occurs and not by its status. The removal of “engages as a business” does not broaden the regulation beyond its present scope.⁴⁹ The commenters were generally supportive regarding this change, though one commenter argued that because the statute used the phrase “engages as a business” the regulation also must use the same phrase. The change to the regulation, however, does not alter the scope or meaning of the rule; the change only clarifies the

⁴⁷ See 75 FR 36589.

⁴⁸ 31 U.S.C. 5330 uses the language “any business that provides ... money transmitting or remittance services.”

⁴⁹ FinCEN notes that “money services business” is defined as “[a] person wherever located *doing business...*” (emphasis added). 31 CFR 1010.100(ff).

rule's application. As a result, it is unnecessary to replicate the phrase and the final rule adopts this proposal without change.

The definition also removes the phrase "whether or not licensed or required to be licensed." While this phrase reflects language in 31 U.S.C. 5312, FinCEN finds the phrase to be unnecessary because it does not add substantive value to the meaning of money transmitter.

The regulatory definition of "money transmission services" includes the phrase "or other value that substitutes for currency" to state that businesses that accept stored value or currency equivalents as a funding source and transmit that value are providing money transmission services. FinCEN has modified the final rule so that both references to "value" in the regulation are expressed as "value that substitutes for currency" to maintain consistency in the rule's language. The word "such" has also been removed from the final rule to eliminate the possibility of any misinterpretation that a person must receive and transmit the exact same currency, funds, or other value to be covered under the definition of "money transmitter."

By including the transmission of value, the prior and current regulatory definitions of "money transmitter" are worded to include persons engaged in informal value transfer systems, including hawalas.⁵⁰ Such activity is money transmission, and the persons engaged in that activity are money transmitters subject to the requirements of the BSA.⁵¹ To further emphasize the rule's applicability to these money transmitters,

⁵⁰ "An 'informal value transfer system' refers to any system, mechanism, or network of people that receives money for the purpose of making the funds or an equivalent value payable to a third party in another geographic location, whether or not in the same form." FinCEN Advisory Issue 33 (Informal Value Transfer Systems) (March 2003). "Hawala" is one name for a type of informal value transfer system that operates outside of, or parallel to, "traditional" banking or financial channels. See generally FinCEN Advisory FIN-2010-A011 (Informal Value Transfer Systems) (September 2010).

⁵¹ Id.

FinCEN has modified the final rule to include a specific reference to informal value transfer systems as a means of money transmission.

The regulatory definition of “money transmission services” also adds the phrase “to another location or person.” Although this phrase is not in the statutory definition of money transmitting service, it is implicit in the statutory definition’s use of the word “transmitting.” Transactions involving the acceptance of currency from one person at one location and the return of that currency to that same person at the same location would not be considered a money transmission service. The addition of the phrase “to another location or person,” explicitly conveys this interpretation.

One commenter suggested that the phrase “the acceptance of currency . . . from one person AND the transmission . . . to another location or person,” indicated that acceptance by the money transmitter of funds had to precede any transmission to satisfy the definition. If this were the case, however, it would be easy – particularly in an electronic environment – to circumvent this definition by the simple expedient of transmitting funds a fraction of a second before accepting them. The activity of money transmitting, for the purposes of FinCEN regulations, involves both acceptance and transmission, but not necessarily in that order. FinCEN is concerned about the ability to circumvent regulation if it were to require that the acceptance of currency must always precede transmission. The final rule adopts the phrase without change.

The phrase “any means” is defined in the prior rule to include transmission “through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; or an electronic funds transfer network.” The final rule moves the phrase “any

means” to a different part of the definition only to increase reader comprehension, and the change in placement of the phrase has no substantive effect on the meaning of the definition. The definition of “any means” in the final rule also includes a specific reference to informal value transfer systems. One commenter suggested adding the phrase “but is not limited to” following “‘Any means’ includes.” While FinCEN believes that this clarification is not technically necessary, as “any means,” by its own meaning, encompasses more than the listed examples in the regulation, we will adopt the change to avoid possible confusion.

The prior regulations also include in the definition, “(B) Any other person engaged as a business in the transfer of funds.”⁵² This phrase was removed from the definition in the Notice. The final rule, however, includes this phrase to minimize any possible confusion regarding whether there has been a change to the scope of the definition of “money transmitter.” The scope of the definition of “money transmitter” in this final rule is the same as that of the prior regulatory definition.

As mentioned above, the prior regulation contained limitations regarding the definition of a “money transmitter.”⁵³ The Notice also contained additional limitations that incorporate existing interpretations of the prior limitation by adding explicit language reflecting policy developed through administrative ruling letters and guidance. The limitation language reads, “whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term ‘money transmitter’ shall not include a person that only . . .” engages in the following activity:

⁵² 31 CFR 1010.100(ff)(5)(i)(b) (formerly 31 CFR 103.11(uu)(5)(i)(b)).

⁵³ 31 CFR 1010.100(ff)(5)(ii) (formerly 31 CFR 103.11(uu)(5)(ii)).

“(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services. . . .” Institutions that are used by money transmitters solely for the purpose of providing a medium of communication or transportation of information between money services businesses and their agents, financial institutions, or service providers are not deemed “money transmitters.” No commenters addressed this issue, and the final rule adopts this proposal without change.

“(B) Acts as a payment processor to facilitate the purchase or payment of a bill for a good or service through a clearance and settlement system by agreement with the creditor or seller. . . .” Although payment processors may provide a money transmission service, the service is ancillary to their primary business of coordinating payments either from a debtor to a creditor or, if operating at the point of sale, from a purchaser to a merchant.⁵⁴ A payment processor could not provide the primary service of coordination without providing ancillary money transmission services, but because the money transmission services are ancillary, and because they are generally low risk, it is appropriate for entities engaged in this activity to be excluded from the definition. Note, however, that this limitation only applies to transmission services by payment processors on behalf of the creditor or seller and not the debtor or buyer. A contractual agreement for transmission services between the creditor or seller and the money transmitter is a relatively controlled flow of money that poses little money laundering risk, provided that the funds are transmitted only to the creditor or seller with whom the payment processor has contracted and not to another location or person. The final rule adopts this proposal with only a change of punctuation needed for clarity.

⁵⁴ FinCEN Ruling 2003-R008 (Definition of Money Transmitter) (Nov. 19, 2003).

“(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but would not be limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the SEC, and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution...” Persons who solely provide a clearance and settlement system or act as intermediaries between BSA regulated institutions and do not provide other types of money transmission services are mere instrumentalities that the financial institutions use to process their transfers. Therefore, these instrumentalities, such as the credit card networks, are not included in the definition of “money transmitter.” The final rule adopts this proposal without change.

“(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person engaged in such business from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial papers, or other value at any point during the transportation.”

This limitation encompasses past armored car rulings. The final rule slightly modifies the proposed language to make this connection explicit, by including a specific reference to armored cars, and by limiting the applicability of the limitation to persons that, like the armored car companies that requested rulings from FinCEN, were primarily engaged in providing armored car services. FinCEN previously ruled that although armored car services may fall within the definition of a “money transmitter,” to the extent

that they transport currency on behalf of BSA regulated institutions, they should not be treated as money transmitters.⁵⁵ FinCEN additionally determined that an armored car is not a money transmitter when it moves currency on behalf of a private party to an account or another location of the same party without taking a financial stake in the transaction.⁵⁶

To take advantage of this limitation, the person engaged in physical transportation cannot have more than a custodial interest in what is being moved at any point during the transportation.⁵⁷ The exclusion does not apply to such a person if it deposits currency or monetary instruments that it is transporting into its own operating account at a bank, regardless of the identity of the ultimate recipient of the funds represented by the currency or monetary instruments.

One commenter suggested adding “a bailment” as an example of “no more than a custodial interest.” FinCEN does not believe that it is necessary to add this example in the text of the regulation, but does agree that such a status may not confer more than a custodial interest. Another commenter suggested clarifying “custodial interest” by adding the phrase “without beneficial ownership.” While the addition of “without beneficial ownership” might clarify some cases, FinCEN believes that it could lead to confusion given its meaning and use in other money laundering contexts. Our intent with “custodial interest” is to convey that such an entity has no economic stake (beyond payment for its transportation services) in any transaction involving currency, value that

⁵⁵ FinCEN Ruling 2004-R003 (Definition of Money Services Business) (Aug. 17, 2004). See also FinCEN 2003-R007 (Definition of Money Transmitter) (Oct. 28, 2003).

⁵⁶ Id. In such instance, the armored car is merely a conduit or vehicle and has no control over the financial transaction.

⁵⁷ Our rulings referred to the lack of a “stake in the transaction” in establishing the standard for the armored car exclusion; we have clarified our wording to “no more than a custodial interest” to qualify for the exclusion.

substitutes for currency, or other monetary instruments being transported. Based on that interpretation of the phrase, FinCEN adopts the proposed language.

This exclusion applies to transport initiated by any person other than certain BSA-regulated institutions. Specifically, when transport is initiated by a bank, a broker-dealer or other SEC-regulated financial institution, or a futures commission merchant or other CFTC-regulated institution, a transport business such as an armored car is not a money transmitter, regardless of whether the transport is to another location or person.

Except as indicated above, the final rule adopts this proposal without change.

“(E) Provides stored value.” A person who provides stored value is also excluded from the definition of “money transmitter,” whether the stored value is open or closed loop. Furthermore, by “provides” FinCEN intends that both entities involved in the sale and management of stored value programs be excluded. For example, a department store that offers gift cards that only may be used at that department store, a convenience store that sells network branded cards that may be used anywhere like a credit card, or a program manager who organizes a stored value program and facilitates loading the stored value device are not subject to the MSB rules as money transmitters.

FinCEN previously determined that a person solely issuing, selling, or redeeming closed loop stored value is not an “issuer, seller or redeemer of stored value” and was therefore not subject to BSA regulation as an MSB under that MSB category.⁵⁸ This limited exclusion, however, did not imply that all persons who provided open loop stored value were money transmitters. In part, this is because a significant amount of the open loop stored value issued within the United States is issued by or through a depository

⁵⁸ See FinCEN Ruling 2003-R004 (Definition of Money Transmitter/Stored Value (Gift Certificates/Gift Cards)) (Aug. 15, 2003) (FinCEN does not currently interpret the definition of stored value to include closed system products such as a mall-wide gift card program).

institution, a category of financial institution that expressly is excluded from the definition of MSB by statute and regulation.⁵⁹ The Notice proposed only excluding “providers of closed loop stored value” from the definition. In light of the Prepaid Access NPRM, which addresses stored value issues as a separate category of MSB, FinCEN is excluding stored value in any form from being considered a form of money transmission.

Many of the commenters to the Notice regarding stored value were in favor of treating open and closed loop stored value differently under the regulations. While FinCEN agrees that the two forms of stored value have different risks and vulnerabilities, we believe it is appropriate to exclude both forms from the definition of “money transmission.” These issues are further addressed by the Prepaid Access NPRM. Additionally, one commenter noted that the distinctions between open and closed loop stored value are being removed as some closed loop systems can now be international, involve multiple retailers, and be reloadable. The commenter argued that the distinction should be based on whether the stored value product has cash access or not. FinCEN agrees that cash access is one aspect of a stored value product that is significant in assessing the product’s risk, along with reloadability, the breadth of retailer acceptance of the product, and whether the product can be used internationally. These issues were addressed in the Prepaid Access NPRM.⁶⁰ The final rule adopts the above described expanded limitation to the definition of “money transmitter.”

⁵⁹ See 31 U.S.C. 5330(d)(1)(C); 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

⁶⁰ See 75 FR 36589, 36599.

“(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.”

Similar to circumstance (B), persons that sell goods or provide services other than money transmission services, and only transmit funds as an integral part of that sale of goods or provision of services, are not money transmitters. For example, brokering the sale of securities, commodity contracts, or similar instruments is not money transmission notwithstanding the fact that the person brokering the sale may move funds back and forth between the buyer and seller to effect the transaction. Similarly, this limitation would apply to a debt management company that made payments to creditors as the conduit for a negotiated schedule of payments from the debtor to its creditors.⁶¹ The person who is accepting and transmitting the funds is offering a service other than money transmission services which could not be provided without transmitting funds. No commenters addressed this issue and the final rule adopts this proposal without change.

F. Registration and Service of Legal Process

There currently is no provision within 31 CFR Chapter X that requires foreign-located MSBs to designate an agent to accept service of legal process in the United States. To enhance the ability of U.S. law enforcement and regulatory agencies to reach these MSB registrants, FinCEN proposed to add the following language to 31 CFR 1022.380 (formerly 31 CFR 103.41): “(a)(2) Foreign-located Money Services Business. Each foreign-located person engaged in activities in the United States as a money services business shall designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal

⁶¹ See FinCEN Ruling 2004-R004 (Definition of Money Services Business) (Nov. 24, 2004).

process with respect to compliance with this part and shall identify the address of the location within the United States for records pertaining to paragraph (b)(1)(iii) of this section.” FinCEN received three supportive comments on this issue. Accordingly, FinCEN adopts the proposal without change, except insofar as the language was changed slightly to reflect the corresponding language in the definition of MSB, which was changed from the Notice, discussed above.

Compliance with the designation of an agent for service of process provision, however, will require a change to FinCEN Form 107, Registration of Money Services Business. The current form does not contain a field in which such an agent can be designated. FinCEN will soon publish a new proposed form for notice and comment which makes a number of conforming changes to reflect this final rule, including adding a checkbox to indicate whether an MSB is foreign located and allowing for designation of an agent for service of process. Accordingly, this rule provides that compliance with 31 CFR 1022.380 is not required until six months after the date of publication of this final rule in the federal register, by which time the revised FinCEN Form 107, Registration of Money Services Business, will be final and available.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. § 601 et seq.), FinCEN certifies that these regulation revisions will not have a significant economic impact on a substantial number of small entities. Because most MSBs are small entities, this rule will affect a substantial number of small entities. Although a substantial number of small entities are affected, the economic impact of this rulemaking is not significant. This rulemaking imposes no new recordkeeping or reporting requirements on MSBs, with

the possible exception of foreign-located MSBs. In fact, some commenters noted that this rule will have a modest reduction in reporting burden.

In large part, the rule updates the MSB definitions to integrate past guidance and rulings into the regulatory text. Incorporating existing interpretations into the regulatory text would have no impact on small entities that have been aware of these interpretations for years. Even if an MSB was unfamiliar with the existing guidance and rulings, these regulatory changes will not impose a significant economic impact. First, this final rule is limited to revising the MSB definitions to make clearer what activities subject a person to the BSA rules pertaining to MSBs. This change provides additional certainty without adding additional burden. Second, as previously stated, the rule clarifies that certain foreign-located MSBs with a U.S. presence, such as having U.S. customers or recipients, are subject to the BSA rules. Finally, the rule makes minimal nomenclature changes with respect to certain MSB categories to help clarify distinctions.

In addition, the rulemaking combines all of stored value into one category, without substantively changing the existing definition. This structural change will not affect small entities. Accordingly, a regulatory flexibility analysis is not required.

VI. Paperwork Reduction Act Notices

The collection of information contained in this final rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1506-0004, 1506-0013, 1506-0015, 1506-0020, 1506-0052. Based on comments received, the clarification of the definitions in 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)) will likely reduce the reporting burden for most MSBs. Certain foreign-located MSBs conducting business in the United

States may see an increase in their obligation to collect and report information. However, any such potential must be weighed against the reduction in burden to be achieved by clarifying the exceptions we have made explicit regarding the type of business activity that would make a business an MSB. With the exception of foreign-located MSBs, this rulemaking does not impose any new reporting or recordkeeping requirements. Instead, it merely clarifies the current scope of the existing MSB definitions and related rules. To the extent that we have eliminated any uncertainty or ambiguities with this rule and to the extent that we have narrowed the scope of businesses subject to reporting or recordkeeping requirements, we have not in the aggregate expanded, and may in fact have in the aggregate reduced, regulatory obligations.⁶²

Description of Affected Financial Institutions: Money Services Businesses as defined in 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

Estimated Number of Affected Financial Institutions: 42,000

Estimated Average Annual Burden Hours Per Affected Financial Institution: The estimated average decrease in burden associated with the recordkeeping requirements in this final rule is one hour per affected financial institution.

Estimated Total Annual Burden: minus 42,000 hours from OMB control number 1506-0052.

In the Notice, FinCEN invited comment on: whether the proposed collection of information was necessary for the proper performance of FinCEN's mission; the accuracy of the estimated burden associated with the proposed collection of information;

⁶² This amendment to 31 CFR 1010.100 (formerly 31 CFR 103.11) and 31 CFR 1022.380 (formerly 31 CFR 103.41) makes explicit that certain foreign-located persons that conduct MSB operations in the United States must register with FinCEN as an MSB and will be subject to certain BSA recordkeeping and reporting requirements.

how the quality, utility, and clarity of the information to be collected may be enhanced; and how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.⁶³ Commenters did not address these issues specifically. However, commenters stated that clarifying the definitions will reduce the reporting burden on MSBs.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor a collection of information, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number.

VII. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104-4 (March 22, 1995), requires that an agency prepare a

⁶³ Amendment to Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to Money Services Businesses, 74 FR 22129 (May 12, 2009).

budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this rulemaking provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Parts 1010, 1021 and 1022

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law Enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, FinCEN is amending 31 CFR Parts 1010, 1021 and 1022 as follows:

PART 1010 – GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. §§ 1829b and 1951-1959; 31 U.S.C. §§ 5311-5314, 5316-5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107-56, 115 Stat. 307.

2. Section 1010.100 is amended by:

- a. Revising paragraph (ff) introductory language;
- b. Revising paragraph (ff)(1);
- c. Revising paragraph (ff)(2);
- d. Revising paragraph (ff)(3);

- e. Revising paragraph (ff)(4);
- f. Revising paragraph (ff)(5);
- g. Adding reserved paragraph (ff)(7); and
- h. Adding paragraph (ff)(8) as follows.

§ 1010.100 General definitions.

* * * * *

(ff) Money services business. A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

(1) Dealer in foreign exchange. A person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery.

(2) Check casher—(1) In general. A person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at § 1010.100(dd)(1)(ii), (iii), (iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions.

(ii) Facts and circumstances; Limitations. Whether a person is a check casher as described in this section is a matter of facts and circumstances. The term “check casher” shall not include:

(A) A person that sells stored value in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or other instrument;

(B) A person that solely accepts monetary instruments as payment for goods or services other than check cashing services;

(C) A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services;

(D) A person that redeems its own checks; or

(E) A person that only holds a customer’s check as collateral for repayment by the customer of a loan.

(3) Issuer or seller of traveler's checks or money orders. A person that

(i) Issues traveler's checks or money orders that are sold in an amount greater than \$1,000 to any person on any day in one or more transactions; or

(ii) Sells traveler’s checks or money orders in an amount greater than \$1,000 to any person on any day in one or more transactions.

(4) Issuer, seller, or redeemer of stored value. A person that

(i) Issues stored value (other than a person that does not issue such stored value in an amount greater than \$1,000 to any person on any day in one or more transactions); or

(ii) Sells or redeems stored value (other than a person that does not sell or redeem stored value for an amount greater than \$1,000 from any person on any day in one or more transactions).

(5) Money transmitter--(i) In general.

(A) A person that provides money transmission services. The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person AND the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or

(B) Any other person engaged in the transfer of funds.

(ii) Facts and circumstances; Limitations. Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term “money transmitter” shall not include a person that only:

(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;

(B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;

(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (“SEC”), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;

(E) Provides stored value; or

(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

* * * * *

(7) [Reserved]

(8) Limitation. For the purposes of this section, the term “money services business” shall not include:

(i) A bank or foreign bank;

(ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or

(iii) A natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit.

3. Section 1010.605 is amended by:

a. Revising 1010.605(f)(1)(iv)(A); and

b. Revising 1010.605(f)(2), to read as follows.

§ 1010.605 Definitions.

* * * * *

(f) Foreign financial institution--(1) The term *foreign financial institution* means:

* * * * *

(iv) Any person organized under foreign law (other than a branch or office of such person in the United States) that is engaged in the business of, and is readily identifiable as:

(A) A dealer in foreign exchange; or

* * * * *

(2) For purposes of paragraph (f)(1)(iv) of this section, a person is not “engaged in the business” of a dealer in foreign exchange or a money transmitter if such transactions are merely incidental to the person’s business.

* * * * *

PART 1021--RULES FOR CASINOS AND CARD CLUBS

4. The authority citation for part 1021 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307.

5. Section 1021.311 is amended by revising the paragraph (c)(1) to read as follows:

§ 1021.311 Filing Obligations

* * * * *

(c) * * *

(1) Transactions between a casino and a dealer in foreign exchange, or between a casino and a check casher, as those terms are defined in § 1010.100(ff) of this Chapter, so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in paragraphs (a)(8), (b)(7), and (b)(8) of this section;

* * * * *

PART 1022--RULES FOR MONEY SERVICES BUSINESSES

6. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307.

7. Section 1022.210 is amended by revising the first sentence of paragraph (d)(1)(iii) as follows:

§ 1022.210 Anti-money laundering programs for money services businesses.

* * * * *

(d) * * *

(1) * * *

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). * * *

8. Section 1022.380 is amended by:

a. Revising the first sentence of paragraph (a)(1);

b. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively;

c. Adding a new paragraph (a)(2); and

d. Revising paragraph (b)(3), to read as follows.

§ 1022.380 Registration of money services businesses.

(a) Registration requirement – (1) In general. Except as provided in paragraph (a)(3) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of agents as required by 31 U.S.C. 5330 and this section. * * *

(2) Foreign-located Money Services Business. Each foreign-located person doing business, whether or not on a regular basis or as an organized or licensed business concern, in the United States as a money services business shall designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process with respect to compliance with this chapter, and shall identify the address of the location within the United States for records pertaining to paragraph (b)(1)(iii) of this section. * * *

(b) * * *

(3) Due date. The registration form for the initial registration period must be filed on or before the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

* * * * *

9. Section 1022.410 is amended by:

- a. Revising the heading of the section;
- b. Revising paragraph (a)(1);
- c. Revising paragraph (a)(2);
- d. Revising paragraph (b); and
- e. Revising paragraph (b)(9), to read as follows.

§ 1022.410 Additional records to be made and retained by dealers in foreign exchange.

(a)(1) After July 7, 1987, each dealer in foreign exchange shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such

account is opened or credit line extended. Where a person is a non-resident alien, the dealer in foreign exchange shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the dealer in foreign exchange shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a dealer in foreign exchange has been unable to secure the identification required within the 30- day period specified, it shall nevertheless not be deemed to be in violation of this section if:

* * * * *

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the dealer in foreign exchange.

* * * * *

(b) Each dealer in foreign exchange shall retain either the original or a microfilm or other copy or reproduction of each of the following:

* * * * *

(9) A system of books and records that will enable the dealer in foreign exchange to prepare an accurate balance sheet and income statement.

* * * * *

Date: _____

James H. Freis, Jr.
Director,
Financial Crimes Enforcement Network